IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16958 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SULEMANI HUMA AHAMED - Petitioner(s)

Versus

UNION OF INDIA & 3 - Respondent(s)

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Appearance :

MR KEYUR A VYAS for Petitioner(s) : 1,
MR M.A. SHAIKH with MR BIPIN BHATT for Respondent(s) : 2
MR JITENDRA MALKAN for Respondent(s) : 1
RMR V.M. PANCHOLI AGP for Respondent(s) : 3 -4

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 02/09/2005

ORAL JUDGMENT

1.0 The petitioner has prayed to quash and set aside the communication dated 01.10.2004 passed by respondent no.2 herein, whereby the petitioner was called upon to explain

the circumstances under which he had suppressed the vital aspect of the pendency of a criminal case against him and to show cause as to why passport facilities should not be refused to him. A penalty of Rs.5000/- was also imposed on the ground of submitting incorrect information to the respondent authority.

2.0 The brief facts of the case are that the brother of the petitioner herein had lodged a First Information Report before Sidhpur Police Station against one Kamleshbhai Manilal Padhyay and others for offences punishable u/s.147, 148, 149, 302, 307, 324, etc. of the I.P.C and Section 135 of the Bombay Police Act. Since the offences were triable, the case was committed to the Court of Sessions where the was registered as Sessions Case No. 2 of 2004 before the Sessions Court, Patan and is still pending.

2.1 Thereafter, since the petitioner had desired to settle in a foreign country, he applied for Passport before the respondent authorities. It is the case of the petitioner that the said Application for Passport was not processed by the respondent authority within the stipulated period and that in spite of two

representations, his Application for Passport was not processed.

2.2 On 01.10.2004, respondent no.2 herein, addressed a communication to the petitioner informing that it was brought to the notice of the respondent no.2 by the police authorities that a case under the provisions of I.P.C has been registered against the petitioner, and therefore, the petitioner is not entitled to get Passport in view of the provisions of the Passport Act, 1967. The petitioner was also imposed a penalty of Rs. 5,000/-. Hence, this petition.

3.0 I have heard learned counsel for the parties. From the documents produced on record, it transpires that the petitioner's brother was the first informant of the tragic incident that took place within the jurisdiction of the Police Officer in-charge of Sidhpur Police Station. However, it has been construed that the petitioner is the accused in the said Sessions Case. It appears that the respondent police authorities have not verified the correct facts of the case. In my opinion, the respondent passport authority has passed the impugned order under complete mis-conception of law and non-

application of mind.

3.1 However, during the course of hearing, a consensus has been arrived at between the parties, whereby the respondent authority shall issue Passport to the petitioner, as expeditiously as possible, but, the petitioner shall have to forego the said amount of Rs. 5,000/- imposed on him as penalty.

4.0 In view of the consensus arrived at between the parties, the impugned order dated 01.10.2004 passed by the respondent authority is quashed and set aside. The respondent authority is directed to issue Passport to the petitioner, as expeditiously as possible, in view of the fact that the petitioner had applied for Passport in the year 2002. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs. Liberty to apply in case of difficulty. A copy of this order be supplied to the Central Government Counsel. Direct service permitted.

(K. S. JHAVERI, J.)

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